

REASONABLE FEAR

Winning Self-Defense Strategies

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ELEMENTS

- *DEFENDANT MUST:*

- Be **without fault** in bringing on the difficulty.
- Have **been in actual imminent danger** of losing his life or sustaining serious bodily injury, OR he **must have *actually believed* he was in imminent danger** of losing his life or sustaining bodily injury.
- If his defense is based on his belief of imminent danger, defendant must show **that a reasonably prudent person of ordinary firmness and courage would have entertained the belief** that he was actually in imminent danger and that the **circumstances were such as would warrant a person of ordinary prudence, firmness and courage to strike** the fatal blow in order to save himself from serious bodily harm or the loss of life.
- Have had **no other probable means of avoiding the danger.**
 - *-State v. Hendrix, 270 S.C. 653, 244 S.E.2d 503, (1978)*

ELEMENTS BREAKDOWN

At trial there must be some evidence presented that:

- Defendant was **without fault**
- He was in **actual imminent danger** OR *believed* he was in **danger**
- if *belief* of danger, a **reasonable person** would have thought he was in danger
- **No other probable means** of avoiding the danger

AT TRIAL

■ WHAT NEEDS TO BE SHOWN TO GET A SELF-DEFENSE JURY INSTRUCTION?

- *If there is **any evidence** in the record from which it could reasonably be inferred that the defendant acted in self-defense, the defendant is entitled to instructions on the defense, and the trial judge's refusal to do so is reversible error.*
- *A defendant is not required to establish self-defense by a preponderance of the evidence; instead, the defendant must only produce evidence which causes the jury to have a reasonable doubt as to his guilt. **State v. Grooms, 343 S.C. 248, 540 S.E.2d 99, (2000)***

BURDEN

- **STATE MUST PROVE IT WASN'T SELF-DEFENSE!**

- *State has the burden of disproving self-defense by proof beyond a reasonable doubt. **State v. Addison**, 343 S.C. 290, 540 S.E.2d 449 (2000)*

JURORS EAT THIS STUFF UP

- *Generally, South Carolinians loves guns—no duh.*
- *SC loves the right to defend yourself.*
- *Some jurors are distrusting of law enforcement's ability to investigate a case fairly.*
- *It's interesting! It's an enthralling story!*

STRATEGIES

- MAKE THE JURY LIKE YOUR CLIENT.
 - *Introduce the protagonist to the jury in opening.*
 - *Get good background on his family and life out through direct examination:*
 - family
 - job
 - “hometown boy/girl”
 - Show he/she is a regular person.
 - *Give humanizing details.*
 - Ask “Is your family in the court room today?”
 - E.g. loves to watch “Wicked Tuna”
 - Has a dog named “Fifi”, “Fido”, etc.
 - *Set the stage for the day of the death/altercation.*
 - Show what your client was doing on that day and the events leading up to it.
 - She/he does other things than sit around waiting to kill or hurt people.

■ DEMYSTIFY THE WEAPON.

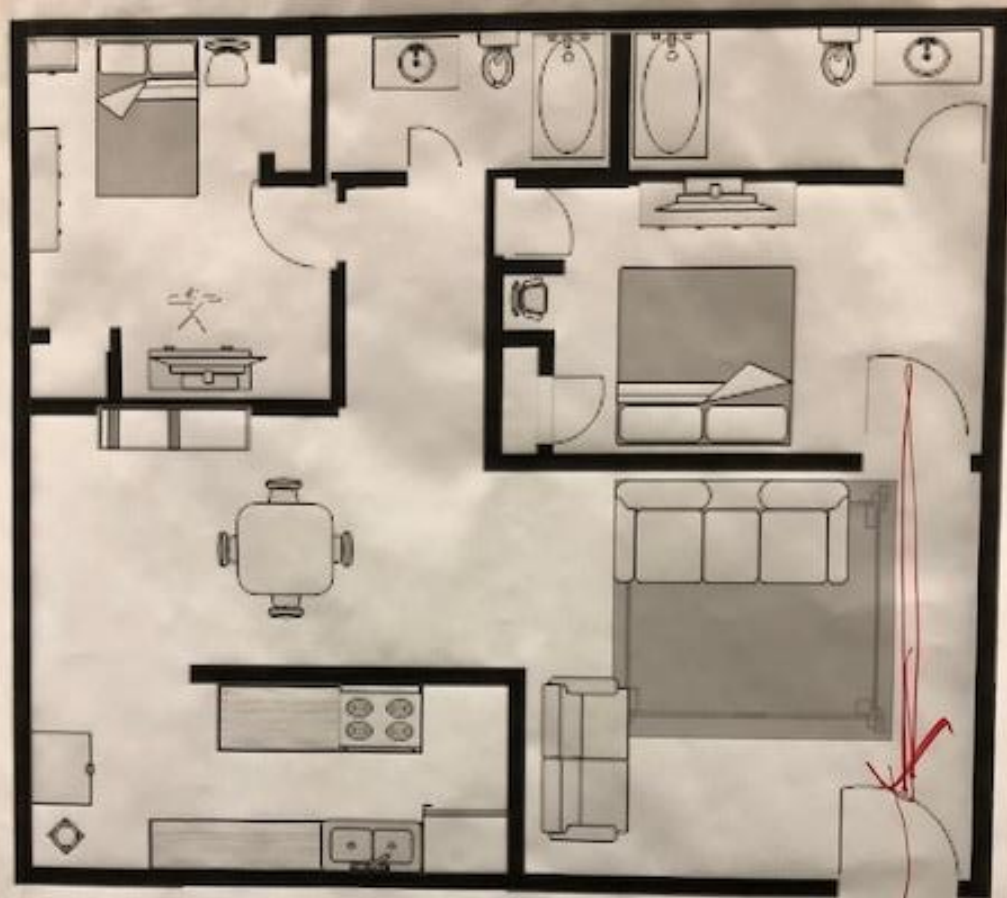
- *Most are weapons of opportunity, not demonically possessed instruments of evil.*
- *Give the backstory of the weapon.*
 - *Why does your client have it?*
 - *Hunting, home defense, protection*
 - *Where did she/he get it? (if it's not a bad reason)*
 - *Bought at Kmart, family member*
- *Just something laying there?*
 - *Kitchen knife, vase*
- *Client carries gun around b/c he lives in bad neighborhood.*
- *Hunk of junk – if it's a rusty, cheap crappy gun/weapon, maybe draw attention to that. Take the menacing aura away. Your client isn't a natural killer – this is just what he happened to have.*

- DON'T BE AFRAID OF THE GUN.
 - Get competent and show your competency.
 - Enlist an expert.
 - Know more about guns than the State.

UCP? NBD

- What if your client should not have been carrying a gun?
- A person can be acting lawfully, even if he is in unlawful possession of a weapon, if he was entitled to arm himself in self-defense at the time of the shooting. ***State v. Burris***, 334 S.C. 256, 513 S.E.2d 104 (1999).
- The mere unlawful possession of a firearm, with nothing more, does not automatically bar a self-defense jury charge. ***State v. Slater***, 373 S.C. 66, 644 S.E.2d 50, (2007)

- VISIT THE SCENE.
- Show the space to jury
 - Diagrams
 - Pictures
 - Video
 - *Help the jury live in the space where struggle happened.*
 - *Show why client HAD to act in the way that they did, in the surroundings that they acted in.*
- **Show why retreat isn't an option!**
 - *Draw out for jury.*
 - *Use the space in the courtroom.*
 - *Showing measurements and distances in real time can make the difference.*
 - *Crime scene experts.*



3027 N. Beltline
Apartment B-6
*Not to scale

Prepared by
Inv. N. Bryan

- GET PHYSICAL IN THE COURTROOM.
 - *Demonstrate measurements and distances*
 - *Get down on the floor if you have to*
 - *Improvise*

- GET TO KNOW YOUR VICTIM.

- *Revisionist history by the State.*

- Frequently it's a fight where both people are jerks → then it escalates, and one person ends up dead.

- Now the State says the dead/hurt guy was an angel and your client is the devil...obviously.

- ***Character and Conduct of the Victim*** (prior relevant bad behavior) as it relates to client's fear

- **SCRE 404(a)(2) Character of the Victim:** evidence of a pertinent trait of character of the victim of the crime can be offered by the accused.

- **SCRE 405 (b) Specific instances of conduct:** states that in cases where a character trait is an **essential element** of a charge, claim or **defense**, proof may be made of **specific instances of that person's conduct**

- *First, the character evidence behavior has to be admissible under 404 exceptions → Then you can use Rule 405 (Methods of proving character) to get the character evidence in.*
- *Get the **404(a)(2) character of the victim** in through **405 (b) Specific instances of conduct:***
 - 405 (b) specific instance(s) of conduct that are essential to a self-defense defense (e.g. reasonable fear)

- *Dead victim*
 - Why was your client afraid of victim?
 - Look for victim's relevant character evidence in the form of **specific instances of conduct** that would justify reasonable fear of the victim:
 - *He threatened me.*
 - *I knew he shot someone previously.*
 - *I am a battered woman.*
- *Alive victim*
 - Cross
 - Possible impeachment

- Highlight differences between your client and victim.
 - *Age*
 - *Size*
 - *Lifestyle*
 - *Sex*

IMPERFECT SELF DEFENSE

- If the facts aren't perfect for self-defense, EMPOWER THE JURY!
- "Misdemeanor murder"
 - *Show why your client was less of a jerk than the other guy*
- Jury nullification.
 - ***"The right of jury nullification has become one of the legal system's best kept secrets."*** Sam Smith, *What Lawyers & Judges Won't Tell You About Juries*.
 - ***"We found a common secondary reason for hung juries was when particular jurors believed the legally correct outcome was unfair."*** (G. Thomas Munsterman, *"Hung Juries: Are they a Problem?"*)
 - *stolen from Harry Dest and Phil Smith of the 16th circuit.
- Common sense arguments

JURY INSTRUCTIONS AND COOL LAW

- Don't have to wait for the other person to get the drop on you.
- Continuing use of force/ multiple shots.
 - *"When a person is justified in firing the first shot, he is justified in continuing to shoot until it is apparent that the danger to his life and body has ceased" State v. Hendrix, 270 S.C. 653, 244 S.E.2d 503, (1978)*
- Right to act on appearances.
 - ***Defendant does not have to show that he was actually in danger.** It is enough if the defendant believed he was in imminent danger and a reasonably prudent person of ordinary firmness and courage would have the same belief. The **defendant has a right to act on appearances even though the Defendant's beliefs may have been mistaken.** Gilchrist v. State, 364 S.C. 173, 612 S.E.2d 702 (2005)*

JURY INSTRUCTIONS AND COOL LAW

- Restoring right to self defense.

- *Even if the defendant's prior acts constituted a provocation, if he thereafter attempted to withdraw from conflict and communicated this to the victim, his right of self-defense is restored. **State v. Hendrix**, 270 S.C. 653, 244 S.E.2d 503, (1978)*
- *An aggressor's right to self-defense is restored after a withdrawal in good faith from the initial difficulty with the victim if that withdrawal is communicated to the victim by word or act. **State v. Bryant**, 336 S.C. 340, 520 S.E.2d 319, (1999)*

- Eric Nixon case, Richland County 9/2017

- Battered woman syndrome.

- Expert testimony regarding "battered woman's syndrome" relevant to the defendant's state of mind, and whether she acted in self-defense. **State v. Hill**, 287 S.C. 398, 339 S.E.2d 121, (1986)

WHEN YOU'RE BARRED FROM A SELF-DEFENSE CHARGE

- Mutual combat.
 - *Evidence of a tacit agreement of engaging in mutual combat.*
- Felonious conduct—client is the aggressor.